IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

KRISTINE MOORE, et al.,

Plaintiffs,

vs.

STATE OF ALASKA,

Defendant.

Case No. 3AN-04-9756 CI

JDO

MAR 31 2010

ORDER ON REVIEW OF 2009 SUBMISSIONS

The Education Clause of the Alaska Constitution provides that "the legislature shall by general law establish and maintain a system of public schools open to all children of the State."[1] On June 21, 2007 – nearly three years ago – this Court issued a Decision and Order that concluded that while the State may delegate its responsibility to maintain public schools to local school districts, as it had done, it had failed to exercise adequate supervision and oversight of chronically underperforming schools within the state. Specifically, this Court held in June 2007 that the State "has failed to identify those schools within the state that are not according to children a meaningful opportunity to acquire proficiency in the subject areas tested by the State and meaningful exposure to the other content areas in the State's education standards. And as to those schools that are deficient in that regard, the State has failed to provide

[1] Alaska Constitution, Article VII, Section 1.

adequate supervision and oversight in a concerted effort to remedy that situation."[2] This Court also held in June 2007 that the due process rights of children in underperforming school districts is violated when the State conditions the receipt of a high school diploma on the successful passage of the High School Graduation Qualifying Exam, when the students in such districts "have not been accorded a meaningful opportunity to learn the material on the exam – an opportunity that the State is constitutionally obligated to provide to them."[3]

Thereafter, evidentiary hearings were held before this Court in 2008 to assess the adequacy of the State's efforts to remedy the deficiencies this Court had identified in the June 2007 Order. On February 4, 2009, this Court issued its Findings of Fact, Conclusion of Law and Order. This Court concluded then as follows:

> Based upon all the evidence presented, this Court finds that the Department [of Education and Early Development], through delegation from the Legislature, is not currently meeting the State's constitutional responsibility to "maintain a system of public schools open to all children of the State." The schools in the chronically underperforming school districts are not constitutionally adequate; the Education Clause requires considerably more from the State in the way of oversight and assistance to those districts.[4]

The February 2009 Order directed the State to file with the Court each of the following: (1) a draft of standards that address the State's constitutional responsibility to insure that chronically underperforming school districts are providing students in those districts with meaningful exposure to the State's content standards; (2) a plan of action that demonstrated adequate remediation plans for students in the intervention districts

---

[2] Decision and Order of June 21, 2007 at 194.

[3] *Id.* at 195.

[4] February 4, 2009 Findings at 56-57.

for the High School Graduation Qualifying Exam; and (3) revised district intervention plans that address and incorporate as appropriate remedial measures that relate to each of the problem areas that the Court had identified in the Findings. The areas that the Decision identified as problematic included the lack of curriculum alignment, a lack of attention to content areas not covered by the State's standardized testing, a lack of attention to each of the specific strengths and weaknesses of each chronically underperforming district, a lack of consideration of pre-Kindergarten and other intensive early learning initiatives, a lack of attention to addressing teaching capacity deficiencies, and the Department's own capacity deficiencies to assist the chronically underperforming school districts.

Both parties have since filed considerable documentation with the Court. In 2009, the State was intervening in five school districts that the State had identified as chronically underperforming: Yupiit, Lower Yukon, Yukon Flats, Yukon-Koyukuk, and Northwest Arctic Borough School District. The parties' 2009 submissions to this Court, consistent with this Court's prior orders, were focused on the State's efforts in those five school districts. The Plaintiffs are not asserting that the State should be intervening in fewer or other school districts, or that the State's method for identifying those districts and schools in which it will intervene is constitutionally infirm.

The State asserts that "[s]ince 2005, the school improvement process in Alaska has been moving forward by leaps and bounds."[5] It maintains that it has demonstrated that it has fully complied with this Court's February 2009 Order, and now has in place a

---

[5] State's Memo. in Support of Filings Required by the February 4, 2009 Decision at 1.

system of accountability and oversight that meets its constitutional obligations. Accordingly, it asks this Court "to find the State in compliance with Section 1 of Article VII of the Alaska Constitution, and dismiss this case."[6] The Plaintiffs disagree. They "urge the Court to find the State in continued noncompliance" with the Education Clause. And the Plaintiffs urge this Court "to appoint a Special Master to determine the specific, targeted educational resources necessary to bring the State into compliance with its constitutional obligations."[7] In response, the State asserts that continuing this litigation is unnecessary because "the State has more than met this Court's specifications for state oversight of education."[8] And it asserts that "if further proceedings are necessary, they should be in front of this Court," and not before a special master.[9]

Discussion

This Court has carefully reviewed all of the parties' submissions from 2009. Based upon that review, this Court finds that the State has not demonstrated to this Court that the State is in full compliance with its constitutional obligations under the Education Clause. This Court finds that the State has not demonstrated that children in chronically underperforming school districts in this state are being accorded a

---

[6] *Id.* at 40.

[7] Plaintiffs' Response to State's Memorandum in Support of Filings Required by the February 4, 2009 Decision at 39.

[8] *Id.* at 53.

[9] *Id.* at 49.

"meaningful opportunity to acquire proficiency in the subject areas tested by the State and meaningful exposure to other content areas in the State's education standards."[10]

The lack of an aligned curriculum persists in the intervention districts.

The State has been administering statewide assessments of student achievement for over 20 years. Five years ago – in 2005 – the State began administering Standards-Based Assessments (SBAs) in grades three through ten. The SBAs are a comprehensive testing system to assess student proficiency in reading, writing and math, and most recently, in science. The SBAs are fully aligned with the State's instructional content standards in each of those subject areas. The parties in this case have agreed that the State has adopted constitutionally sound instructional content standards and testing criteria.[11]

This Court's June 2007 Decision held that the State must accord to each child a meaningful opportunity to achieve proficiency in the subject areas tested by the State, and that it had failed to do so in certain chronically underperforming school districts. One critical component that this Court found was lacking at that time was an alignment between the curriculum being taught to the students in certain districts and the State's instructional content standards. This Court first made clear the State's constitutional obligation in this regard nearly three years ago:

> If generations of children within a school district are failing to achieve proficiency, if a school or a district has not adopted an appropriate curriculum to teach language arts and math that is aligned to the State's performance standards, if basic learning is not taking place for a

[10] Decision and Order of June 21, 2007 at 194.

[11] *Id.* at 27.

> substantial majority of school's children, then the Constitution places the obligation upon the Legislature to insure that the State is directing its best efforts to remedy the situation.[12]

To date, the State has not demonstrated that the students in the chronically underperforming school districts in which the State has intervened are being given instruction on the material that is being tested on the State's SBAs. Indeed, in its 2009 filings with this Court, the State acknowledges "at this time, we cannot say that each intervention district has a curriculum fully aligned with the content standards."[13]

The State has elected to place the responsibility for curriculum selection and alignment on each of the underperforming school districts in which it has intervened. The State has concluded that "having each district be responsible for its own alignment is a good thing for education and this is the direction that the Department has chosen to go."[14] The State asserts that having each district develop its own aligned curriculum "is at the heart of the creative, 'brainstorming' process that excites and energizes a teacher" and that if the State were to provide an aligned curriculum to a district it would lead "to a sterile, bureaucratized education program that would increase teacher dissatisfaction and accelerate turnover."[15]

The State's delegation of curriculum alignment to chronically underperforming school districts is not constitutionally precluded, so long as the State is making its best efforts to insure that each such district is receiving the support and oversight it needs to

---

[12] June 2007 Decision and Order at 188.

[13] State's Memorandum in Support of Filings Required by the February 4, 2009 Decision at 13.

[14] State's Reply in Support of Filings Required by the February 4, 2009 Decision at 41.

[15] *Id.* at 43. *But cf.* June 2007 Decision and Order at 118.

promptly complete this task. But the SBAs have now been administered since 2005, and yet the State has indicated that the curriculum alignment process in the intervention districts is far from complete and that it intends to allow the intervention districts an unspecified amount of additional time "to complete the alignment task in increments and on an expanded timeline."[16]

The State's continued delay in achieving curriculum alignment in the chronically underperforming school districts is not constitutionally acceptable. The Plaintiffs have persuasively argued that if each small school district is expected to select its own curriculum and align that curriculum to the State's standards, then there needs to be considerably greater technical support provided to each district to enable that district to promptly complete this task. Further, this Court finds that unless and until a chronically underperforming school district can fully complete those tasks, during the interim the State must immediately provide that district with access to a fully aligned curriculum together with adequate professional training so that that curriculum can effectively be used in the district's classrooms.[17] The materials submitted to this Court in 2009 demonstrate that the intervention districts have been requesting considerably more help from the State in order to fully align their curriculum, but for whatever reason, that additional assistance has not been provided to them. For example, the Lower Yukon School District's draft District Improvement Plan (DIP) for 2009-2010 repeatedly states in bold, "LYSD requests that EED make available to districts a clearinghouse of

[16] *Id.* at 41, n.121.

[17] *See* June 2007 Decision and Order at 16, ¶22.

resources and instructional practices that are not only research-based but aligned to Grade Level Expectations, as well."[18]

In light of the foregoing, this Court finds that the State is failing to meet its constitutional obligation to maintain schools in the chronically underperforming school districts because the State has failed to date to insure that those districts have teachers that are trained to teach a curriculum that is aligned to the State's standards in math, reading, writing and science. As this Court stated in June 2007, the State "must insure that its educational standards are being implemented at the local level so that all children within this state receive their constitutional entitlement to the opportunity for an adequate education."[19] To date, nearly three years later, this has not yet been achieved.

The State's efforts to insure meaningful exposure to the other content standards in the intervention districts has been inadequate.

Each of the many educators who have testified in this case have acknowledged that a student that receives instruction solely in math, reading, writing and science is not receiving an adequate education. To this end, the State developed content standards in several other subject areas apart from those tested on the SBAs, which include geography, government and citizenship, history, skills for a healthy life, arts, technology, employability, library/information literacy and world languages.[20] In the June 2007 decision, this Court recognized that to be constitutionally adequate, a public school

[18] Ex. 2609 at 63691, 63693, 63695.

[19] June 2007 Decision and Order at 186.

[20] *Id.* at 13.

education should address these other subjects, and held that "the State must insure that each school district has a demonstrated plan to provide children ... meaningful exposure on the remaining content standards."[21]

The State asserts that it has taken appropriate action to address this portion of the June 2007 Decision because it has adopted a draft of standards concerning meaningful exposure to the other content standards and it has informed the intervention districts that they needed to address these other content standards in their DIPs.[22]

Although the State has taken some action with respect to this issue, the State has not yet demonstrated adequate compliance with this portion of the Court's June 2007 decision. The State's 2009 submissions to this Court do not demonstrate that each of the intervention school districts has a demonstrated plan to provide children with meaningful exposure to the remaining content standards. With the exception of the draft DIP from Northwest Arctic Borough School District, each of the other plans submitted from the intervention districts falls far short of demonstrating a plan to provide the children within the district with meaningful exposure to the remaining content standards. The draft DIP for Yupiit was left completely blank in the space for the district to describe the means by which it will ensure students receive meaningful exposure to content areas not tested by the State.[23] And the Yukon Flats School District's draft plan

---

[21] *Id.* at 189.

[22] State's Reply in Support of Filings Required by the February 4, 2009 Decision at 39.

[23] Ex. 2608 at 63757.

simply states that the district action to address the other content standards consists of a "district-wide curriculum cycle" with "instruction and collaborative meetings."[24]

The State's 2009 briefing asserts that "in the future, the Department will monitor intervention districts regarding meaningful exposure for these content areas."[25] To date, the State has drafted standards that define meaningful exposure and it has sent a directive to the intervention districts to include meaningful exposure to the additional content areas in their DIPs. This Court's February 2009 decision required that the State draft standards that "address the State's constitutional responsibility to insure that chronically underperforming school districts are providing students in those districts with meaningful exposure to the State's content standards."[26] The State's submissions on this issue since that date are inadequate to demonstrate compliance with this component of that decision. This Court's February 2009 decision can not reasonably be interpreted to require only the drafting of an operational definition of meaningful exposure, together with the provision of a list of resources to school districts for content areas that are not tested by the State.[27] Rather, this Court intended by that order that the State direct its best efforts to insure that students in chronically underperforming school districts are actually being accorded meaningful exposure to the State's other instructional content areas.

---

[24] Ex. 2610 at 63419.

[25] State's Memorandum at 37.

[26] February 2009 Decision at 57-58.

[27] See Ex. 2637.

The State's submissions regarding the HSGQE Remediation Plans are inadequate.

The February 2009 Decision directed the State to "file with this Court a plan of action that addresses the concerns identified in these Findings with respect to the adequacy of the remediation plans in the intervention districts for the High School Graduation Qualifying Exam."[28] The State's 2009 submissions demonstrate that the State made some effort to address this topic with the intervention districts. *See* Exhibit 2641 at 63820-63821. But the Department has not demonstrated that it is providing adequate oversight and support to each of the intervention districts on this issue.

The Court does find that the draft DIP submitted from Northwest Arctic Borough School District demonstrates appropriate attention to this issue by that school district. *See* Ex. 2612 at 63620-63645. But even with that district, the record is silent as to the support and oversight, if any, that the Department is according to that district to insure that the plans the district submitted are being effectively implemented and that the State is providing that district with appropriate technical assistance to that end. In the other four intervention districts, the State has not adequately demonstrated that individual remediation plans are in place for each of the district's students who are not proficient in one or more of the subjects tested on the HSGQE. Indeed, the State's submissions indicate that while each district is expected to develop an individual remediation plan for each student, "details of each plan must be complete, and submitted to EED upon request, before December 15 each year for all students not proficient in all three sections of the fall exam." It is unclear from this language – in which only some of the

[28] February 2009 Decision at 58.

plans will be sent to the Department, and then only at the Department's request -- whether the Department has made any effort to actually review the HSGQE remediation plans of the intervention districts. In short, the State has failed to demonstrate that individual remediation plans have been developed for each student who has not achieved proficiency in each of the intervention districts and that those plans are actually being effectively implemented. Given that these districts are in intervention status due to chronic underperformance, the Department must provide considerably more in the way of technical support and guidance to each such district so as to insure that this component of the Court's February 2009 order is fully effectuated. For example, this might include the designation of one or more individuals at EED with the responsibility of overseeing all of the remediation plans in the intervention districts, who would also be available to provide technical assistance and guidance to each of the designated professionals for the students with respect to those remediation plans.

The State has failed to adequately address teacher retention and capacity.

It is undisputed that teacher turnover and teacher capacity are significant problems in the chronically underperforming school districts. Clearly, the constitutional requirement to "maintain a system of public schools" requires that there be a capable teaching staff in those schools. The State's 2009 submissions do not demonstrate that it has adequately addressed this concern.

In this Court's view, it could be very helpful to the intervention districts and the State if the State were to provide the resources to interview each of the teachers in the intervention districts at the end of each school year as to that teacher's reasons for

staying or leaving the district, and also asked each teacher to identify any specific additional resources or support that he or she seeks – be it in the classroom, with housing, with the district office, with EED, or in the community. To be most useful, the intervention districts would be closely involved in both the development of the interview questions and the analysis of the interview results. With this information in hand each year, the State would be in a better position to more effectively assist each of the intervention districts in addressing teacher turnover and teacher capacity in that district.

Further, as noted above, the State needs to insure not only that curriculum materials aligned with the State's standards are available to the teaching staff at each intervention districts, but also that the teachers are provided adequate instructional support and technical assistance so as to insure that that curriculum will actually be effectively taught in the classrooms. The State's 2009 filings indicate that the State has been making efforts to address teacher capacity, through Leadership Institutes as well as with technical assistance coaches, content support specialists, and teacher mentors in the intervention districts. And yet until the State insures that an aligned curriculum is available for all of the teaching staff in the intervention districts to effectively use, it would seem that these other efforts would be considerably less likely to significantly impact student achievement.

The Draft DIPs that were submitted do not comply with this Court's February 2009 Order.

In May 2009, the Department submitted draft DIPs prepared by each of the five intervention districts. As the Department itself acknowledged, "several districts' plans

required considerable additional work."[29] With the exception of the Northwest Arctic Borough School District's draft DIP, the draft DIPs do not adequately address the concerns identified by this Court in the February 2009 Decision. In short, four of the draft DIPs filed by the Department are not "revised district intervention plans that address and incorporate as appropriate remedial measures related to each of the problem areas identified in these Findings."[30] Considerably more work is needed for these plans to demonstrate compliance with this Court's February 2009 Order than what was submitted to the Court. Perhaps this work has now been completed, and the Court-ordered plans can be promptly filed. In its May 2009 filing with this Court, the Department indicated that it would be working with the intervention districts "over the next several weeks regarding the content of the final I-DIP's." Given that the State has elected to delegate the drafting of the DIPs to each intervention district, it would appear that the intervention districts could each benefit from considerably more technical assistance from the State in completing those plans. As of yet, the State has not demonstrated that the intervention districts each have appropriate DIPs actually in place that address the constitutional deficiencies set forth in this Court's February 2009 decision.

Conclusion

Based on the current record before this Court, the State has failed to demonstrate that it has complied in full with its constitutional obligation to "maintain a

[29] State's Memorandum in Support of Filings at 7.

[30] February 2009 Decision at 58. *See supra* pps. 2-3.

system of public schools open to all children of the State."[31] The State has not demonstrated that children in the chronically underperforming districts in this state are being according a meaningful opportunity to learn the material that is being tested on the State's assessments for reading, writing, math and science. Nor has the State demonstrated that children in those districts are being according meaningful exposure to the State's other content standards. And the State has not demonstrated that individual remediation plans are in place in each of the intervention districts to assist each of those students who have not achieved proficiency on the HSGQE. Dismissal of this action at this time is not warranted.

This Court rejects the Plaintiffs' proposal to appoint a special master at this time. The Court remains hopeful that the inadequacies identified in this decision can be promptly remedied by the State without extensive further hearings. However, in the event that these continuing constitutional violations cannot be promptly remedied after this Order, then the Plaintiffs may renew their request for a special master.

In evaluating the State's responses at this time, this Court returns once again to the language of the Alaska Constitution, which places the responsibility "to maintain a system of public schools open to all children of the State" squarely upon the Legislature – not upon the Department of Education and Early Development and not upon local school districts. To date, the State has not demonstrated that the delegation of this responsibility to school districts that have been identified as chronically underperforming, but which do not appear to have been accorded adequate assistance and oversight, will result in compliance with this constitutional responsibility.

---

[31] Alaska Constitution, Article VII, Section 1.

In light of the foregoing, IT IS ORDERED as follows:

Within 60 days of the date of this Order's distribution, the State shall file and serve each of the following:

1. A detailed plan as to how an aligned curriculum in each of the SBA-tested subject areas – math, writing, reading, and science – shall be taught in each of the intervention districts beginning in the fall of 2010. This plan will include a provision for adequate professional development to each of the teaching staff with respect to that curriculum.

2. A comprehensive review of the meaningful exposure to each of the other content areas that is currently offered to school children in each of the intervention districts, an identification of any deficiencies in that regard, and a detailed plan for each district as to how to address those deficiencies.

3. Detailed individual remediation plans for each junior and senior high school student in each of the intervention districts who has not yet achieved proficiency on one or more sections of the HSGQE. These plans shall be filed in a manner that protects student confidentiality.

4. District Improvement Plans for each of the intervention districts that adequately address the problem areas identified in this Court's February 2009 decision: curriculum alignment, content areas not covered by the State's standardized testing, ascertainment of the specific strengths and weaknesses of each chronically underperforming district, attention to pre-Kindergarten and other intensive early learning initiatives, and attention to teaching capacity deficiencies.

5. An update on the status of any specific efforts at the Yupiit School District. In its September 2009 filing, the Department indicated its intent to take additional steps to strengthen and expand its intervention in Yupiit.[32]

The Plaintiffs are accorded 30 days from the date of the State's submissions within which to file their response.

DATED this 31st day of March, 2010.

Sharon Gleason
SHARON GLEASON
Judge of the Superior Court

I certify that on 3.31.10 a copy of the above was mailed to each of the following at their address of record (list name if not an agency)
☐ CSED ☐ AG ☐ PD ☐ DA
Deputy Clerk / Secretary

✓ Brymer
✓ Slotnick
✓ Trickey

[32] *See* State's Supplemental Reply to Plaintiffs' Addendum at 9-10, together with Ex. 2655, a draft Memorandum of Understanding.